

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE COMMISSIONER OF PATENTS AND TRADEMARKS

In re

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Decision on
Petition for Review
Under 37 C.F.R. § 10.2(c)

4-10-1998

DECISION

(hereafter "Petitioner") seeks review, pursuant to 37 C.F.R. § 10.2(c), of the August 7, 1998, decision of the Director of the Office of Enrollment and Discipline (hereafter "Director") denying Petitioner's request for a passing score on the morning section of the August 27, 1997, examination for registration to practice before the Patent and Trademark Office (hereafter "PTO") in patent matters. Petitioner also seeks waiver of the \$130 fee requirement for this 10.2(c) petition. The petition is denied.

BACKGROUND

An applicant for registration to practice before the PTO in patent matters must achieve a passing grade of 70 on both the morning and afternoon section of a registration examination. Petitioner sat for the August 27, 1997, registration examination. By letter dated January 22, 1998, Petitioner was notified that he had received a failing score on both the morning (66) and afternoon section (58) of the examination. The letter informed Petitioner that requests for regrade must be filed on or before March 23, 1998. See 37 C.F.R. § 10.7(c) (regrade requests must be filed within two months of notification). On March 19, 1998, Petitioner filed a request for regrade of the morning section of the examination. On August 7, 1998, the Director issued

her decision on Petitioner's request for regrade of the morning section, increasing Petitioner's score by 2 points, to 68.

Petitioner requests review of the Director's August 7, 1998, decision on his request for regrade. He also requests waiver of the \$130 fee requirement for this 10.2(c) petition.

DISCUSSION

The Commissioner has the authority to waive any of the PTO regulations pursuant to 37 C.F.R. § 10.170, which provides in pertinent part:

(a) In an extraordinary situation, when justice requires, any requirement of the regulations of this part which is not a requirement of the statutes may be suspended or waived by the Commissioner

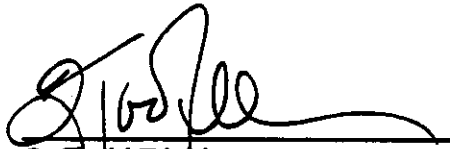
An "extraordinary situation" for purposes of the waiver regulation is one which could not have been prevented by the exercise of ordinary care or diligence. See Nitto Chemical Indus. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (finding that "oversight that could have been prevented by the exercise of ordinary care or diligence" is not an extraordinary situation). Petitioner has the burden to show that his circumstances rise to the level of an extraordinary situation which, in the interest of justice, requires a waiver.

In support of his request for waiver of the fee requirement, Petitioner states that waiver is requested "in view of the clear errors made by the Director's ruling (as pointed out in the petition)." Petition, p. 1. Petitioner's argument is without merit. The petition may discuss perceived errors in the Director's reasoning, but it does not explain how these perceived errors rise to the level of an extraordinary situation warranting a fee waiver. Accordingly, Petitioner has not met his burden of showing that his personal circumstances rise to the level of an extraordinary situation which, in the interest of justice, requires waiver of the fee for this 10.2(c) petition.

Petitioner's remaining arguments address the merits of the Director's August 7, 1998, decision on regrade. Because Petitioner's request for review of that decision was filed without the requisite \$130 fee, and in light of the determination that Petitioner is not entitled to waiver of the fee requirement, his request for review of the merits of the Director's August 7, 1998, decision on regrade is moot.

CONCLUSION

Petitioner has not met his burden of showing that his personal circumstances rise to the level of an extraordinary situation which, in the interest of justice, requires a waiver. Accordingly, Petitioner's request for waiver of the fee requirement for review, pursuant to 37 C.F.R. § 10.2(c), of the Director's August 7, 1998, decision on regrade of the morning section of the August 27, 1997, examination is DENIED. His request for review of the merits of the Director's August 7, 1998, decision is DISMISSED.

A handwritten signature in black ink, appearing to read 'Q. Todd Dickinson', is written over a horizontal line.

Q. Todd Dickinson
Acting Assistant Secretary of Commerce and
Acting Commissioner of Patents and Trademarks